

FILED

Aug 13 2010

CLERK, US DISTRICT COURT
NORFOLK, VAMOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	EASTERN	District VIRGINIA, NORFOLK DIV.
Name (under which you were convicted): SHON M. WALTER		Docket or Case No.: 2:09cr44
Place of Confinement: FCI ALLENWOOD - LOW	Prisoner No.: 58717-083	
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) v. SHON M. WALTER	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____
United States District Court for the Eastern District of Virginia, Norfolk Division: 600 Granby Street, Norfolk, Virginia 23510-1915

(b) Criminal docket or case number (if you know): 2:09-cr-000440JBF-TEM

2. (a) Date of the judgment of conviction (if you know): September 8, 2009

(b) Date of sentencing: September 8, 2009

3. Length of sentence: 276 Months (23 Years)

4. Nature of crime (all counts): _____
COUNT 1: T. 18, USC, Sections 2252A(a)(2)(A), 2252A(b)(1), 2256(1), 2256(2), & 2256(8)
COUNT 6: T. 18, USC, Sections 2252A(a)(2)(A), 2252A(b)(1), 2256(1), 2256(2), & 2256(8)

5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? n/a

6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

n/a

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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: n/a

(b) Docket or case number (if you know): n/a

(c) Result: n/a

(d) Date of result (if you know): n/a

(e) Citation to the case (if you know): n/a

(f) Grounds raised: n/a

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): n/a

(2) Result: n/a

(3) Date of result (if you know): n/a

(4) Citation to the case (if you know): n/a

(5) Grounds raised: n/a

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: n/a

(2) Docket or case number (if you know): n/a

(3) Date of filing (if you know): n/a

(4) Nature of the proceeding: n/a

(5) Grounds raised: n/a

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result: n/a

(8) Date of result (if you know): n/a

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: n/a

(2) Docket or case number (if you know): n/a

(3) Date of filing (if you know): n/a

(4) Nature of the proceeding: n/a

(5) Grounds raised: n/a

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(7) Result: n/a

(8) Date of result (if you know): n/a

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: n/a

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: The Government's response to the Movant's "Motion for Downward Departure" was filed after the deadline.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- The response was due seven (7) days prior to the sentencing hearing but was not filed until six (6) days before the sentencing hearing.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No n/a

(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No n/a

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

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Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes No n/a

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No n/a

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No n/a

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: n/a

GROUND TWO: The Pretrial Services officer failed to follow procedures and did not act as an impartial arm of the Court.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- The Pretrial Services officer failed to notify the Court that the Government's response to the Movant's "Motion for Downward Departure" was filed late.
- The Pretrial Services officer failed to present the Movant with a copy of the PSR; instead placing this responsibility on the Movant's counsel.

***** PLEASE SEE ATTACHED ADDITIONAL PAGES FOR CONTINUATION.**

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No n/a

(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No n/a

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes No n/a

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No n/a

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No n/a

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: n/a

GROUND THREE: The Movant's 14th amendment rights were violated.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- Following the Movant's detention hearing he was placed in protective custody, under the condition of solitary confinement, at the holding center. This condition of confinement:
 - restricted the Movant's communication with Counsel.
 - prevented Movant's counsel from arranging any/an appropriate psychosexual evaluation.

***** PLEASE SEE ATTACHED ADDITIONAL PAGES FOR CONTINUATION.**

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No n/a

(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No n/a

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes No n/a

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No n/a

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No n/a

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: n/a

GROUND FOUR: The Movant's 6th amendment rights were violated by his ineffective counsel.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

- The Movant's Counsel:

- advised the Movant to plead not guilty at arraignment despite the existance of a verbal agreement, with the Government, to sign a plea agreement.
- failed to file a promised "In Limine" Motion.
- failed to initiate/complete an independant computer forensic evaluation, as promised.

***** PLEASE SEE ATTACHED ADDITIONAL PAGES FOR CONTINUATION.**

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No n/a

(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No n/a

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes No n/a

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No n/a

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes No n/a

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

NOTE: Further Ground presented on attached additional pages!

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: n/a

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Yes, all presented Grounds are new. They were not brought at an earlier time either because the Movant had not recognized the Ground or because he was unaware of how to raise the Ground.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. n/a

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: John W. Bonney, P.C.: 5442 Tidewater Drive, Norfolk, Virginia 23509 Phone: 757-640-1008

(b) At arraignment and plea: John W. Bonney, P.C.: 5442 Tidewater Drive, Norfolk, Virginia 23509 Phone: 757-640-1008

(c) At trial: n/a

(d) At sentencing: John W. Bonney, P.C.: 5442 Tidewater Drive, Norfolk, Virginia 23509 Phone: 757-640-1008

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(e) On appeal: n/a

(f) In any post-conviction proceeding: n/a

(g) On appeal from any ruling against you in a post-conviction proceeding: n/a

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: n/a

(b) Give the date the other sentence was imposed: n/a

(c) Give the length of the other sentence: n/a

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No n/a

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* This Motion is timely and within the one-year period of limitation.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

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Therefore, movant asks that the Court grant the following relief: 1) that this case be remanded to the District Court for resentencing.

*** PLEASE SEE ATTACHED ADDITIONAL PAGES FOR CONTINUATION.

or any other relief to which movant may be entitled.

n/a

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 8-11-10
Son n/a (month, date, year).

Executed (signed) on 8-9-10 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. n/a

IN FORMA PAUPERIS DECLARATION
INCLUDED

[Insert appropriate court]

* * * *

MOVANT'S RETURN ADDRESS:

Shon M. Walter

58717-083

LSCI Allenwood

P.O. Box 1000

White Deer, PA 17887

PAGES OF CONTINUATION: Motion to Vacate, Set Aside,
of Correct a Sentence By a Person in Federal Custody

United States District Court	EASTERN	District VIRGINIA, NORFOLK DIV.
Name (under which you were convicted): SHON M. WALTER	Docket or Case No.: 2:09cr44	
Place of Confinement: FCI ALLENWOOD - LOW	Prisoner No.: 58717-083	
UNITED STATES OF AMERICA	Movant (<u>include name under which you were convicted</u>) v. SHON M. WALTER	

Motion Under 28 U.S.C. § 2255: Pages of Continuation

***** Continuation of Ground Two:**

- The Pretrial Services officer failed to present the Movant with a copy of the PSR addendum until moments before the start of sentencing proceedings.
- The Pretrial Services officer acted as an interrogator, not an objective author of an impartial report.
- The Pretrial Services officer failed to note the Movant's acceptance of responsibility, as expressed during the PSI interview.
- The Pretrial Services officer failed to include information about the Movant's personal and professional life that was provided during PSI interviews.
- The Pretrial Services officer included information in the PSR that placed other individuals at risk for harm.
- The Pretrial Services officer arranged facts within the PSR in order to suggest additional criminal behavior.

- The Court was unaware of the above stated conduct.

***** Continuation of Ground Three:**

- deteriorated the Movant's emotional and psychological condition to a level of diminished capacity as a result of stress and social deprivation experienced under twenty-three (23) hour/day lock-down conditions.
- prevented the Movant from accessing/performing independent legal research.
- prevented the Movant from accessing any/appropriate counseling, with respect to his convicted offence.
- inhibited the Movant's ability to more effectively demonstrate his full acceptance of responsibility.

***** Continuation of Ground Four:**

- advised the Movant to sign a plea agreement that:
 - did not include:
 - a calculation of sentencing guidelines range.
 - an explanation, or even mention of, enhancements the Government intended to pursue.
 - a complete calculation of the Movant's offense level.
 - did include:
 - two duplicate counts for the same offence.
- failed to address any sort of psychosexual evaluation for the Movant.
- failed to voice/act on the Movant's objections to information

contained within the PSR.

- failed to consider/negotiate a polygraph test for the Movant.
- failed to recognize and notify the Court of procedural errors carried out by the Government and Pretrial Services officer.
- failed to object, during the sentencing hearing, when both the Government and Court led witnesses.
- failed to fully develop/present mitigating factors in the Movant's "Motion for Downward Departure," likewise at sentencing.
- placed pursuit of payment for services as a priority.
- overall, acted as an ineffective advocate for the Movant.

NOTE: Further Grounds, that did not fit within the space provided by the standard 28 U.S.C. § 2255 packet, will follow the "Continuation of Requested Relief."

***** Continuation of Requested Relief:**

- 2) full consideration of the Movant's 28 U.S.C. § 2255 and accompanying pages of continuation for review and furtherance.
- 3) ejection of the prior PSR and addendum; to be replaced following a new PSI, conducted by a disinterested party, who is not associated with the Eastern District of Virginia, Norfolk Division Pretrial Services or Probation/Supervision office, that will produce a proper and impartial PSR.
- 4) an evidentiary hearing in addition to sufficient discovery to support and further the Grounds raised; if the Court

deems necessary.

- 5) that Count 1 and Count 6 are combined/eliminated as to allow only one Count to advance at resentencing.
- 6) recomputation of sentencing guidelines and enhancements based on the Grounds raised within this document.
- 7) provision of an opportunity to complete an appropriate psychosexual evaluation of the Movant for presentation at resentencing.
- 8) removal of the "special condition" requiring the Movant to submit to ABEL assessment and/or penile plethsmograph testing; as these conditions are excessive and unjustified based on the Movant's convicted offence and history.
- 9) that other terms of supervision and "special condition(s)" be reevaluated at resentencing.
- 10) appointment of Public Counsel, at no cost to the Movant, to represent, guide, and assist the Movant through the discovery process, evidentiary hearing, new PSI, resentencing, and any additional or further proceedings associated with this 28 U.S.C. § 2255 Motion.
- 11) that a change of venue be granted as the Honorable Judge Jerome B. Friedman has been prejudiced against the Movant as a result of the initial PSR and court proceedings; making it inappropriate for Judge Jerome B. Friedman to participate in further hearing(s) of this matter or to resentence the Movant.
- 12) that the Court and/or Government provide printed copies of ALL cases, policies, and rules cited (published and

unpublished) within their response(s) to the Movant's Motion.
13) any such other equitable relief that/as the Court may deem appropriate at this or a future time.

**Additional Grounds that exceeded the space provided
within the standard 28 U.S.C. § 2255 packet.**

GROUND FIVE: The Movant was convicted of two duplicate counts; enabling the Court to reach a sentence exceeding the statutory maximum for the offence.

(a) Supporting facts:

- Count 1 and Count 6 of the indictment, and following conviction, are for the exact same offence.
- The plea agreement did not indicate that the Government was seeking a sentence exceeding the statutory maximum.
- At the time of the plea proceedings the Government, Court, and counsel for the Movant agreed that the two counts could/would be sentenced concurrently.
- The Court utilized the two duplicate counts to justify a guidelines sentence that exceeded the statutory maximum for the offence.

(b) Direct Appeal of Ground Five:

- * The answer to both question 1 & 2 in this section is: n/a

(c) Post-Conviction Proceedings:

- * The answer to all parts of questions 1 through 7 in this section is: n/a

GROUND SIX: Enhancements were incorrectly applied when calculating the Movant's sentencing guidelines range.

(a) Supporting facts:

- The act of distribution and the use of a computer in committing the offence are applied as enhancements despite the fact that these elements are already part of the base offence level.
- The Movant received an enhancement for the sexual exploitation of a minor, even though this action was not part of his charged and convicted offence.
- The credit for cooperation and acceptance of responsibility, though granted, was wrongfully withheld until the final moments of the sentencing proceeding.

(b) Direct Appeal of Ground Six:

- * The answer to both question 1 & 2 in this section is: n/a

(c) Post-Conviction Proceedings:

- * The answer to all parts of questions 1 through 7 in this section is: n/a

GROUND SEVEN: The issued sentence is greater than necessary to reflect the seriousness of the offence, promote respect for the law, provide just punishment, protect the public, and to deter future criminal conduct.

(a) Supporting facts:

- The Movant offered complete cooperation and accepted full responsibility for the convicted offence from the onset of his investigation and prosecution.

- Consideration was not given to the Movant's efforts to assist law enforcement with information that would have assisted in the prosecution of another.
- The Court failed to consider the Movant as an individual, in an impartial manor, at sentencing. For example, the Court:
 - did not consider that a non-guidelines sentence could have satisfied the goals stated in this Ground.
 - dismissed/discardred character letters offering factual information about the Movant.
 - speaks about appearances, not facts.
 - dismisses the Movant's mitigating circumstances:
 - Sexual abuse during his childhood.
 - Sexually charged examples of appropriate behavior during his childhood.
 - The Movant's personal and family history of addiction; specifically to sex and alcohol.
 - The terminally ill condition of the Movant's daughter.
 - offered opinion about the Movant's state of mind.
- The Movant has a clear criminal history record.
- This sentence creates a disparity. The Movant's sentence is excessive when compared to other cases with similar charges.
- Consideration was not given to the fact that the guidelines range, as calculated in this case, exceeded the statutory maximum for the convicted crime.
- A variance sentence was not fully considered based on the merrits of the facts associated with the convicted offence

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and the mitigating factors present in the Movant's case.

- A variance sentence was not fully considered based on the Movant's mitigating factors.
 - As a youth the Movant experienced sexual abuse on several occasions.
 - The Movant was raised in a sexually open and charged environment.
 - The Movant was exposed to addictive behavior as he was growing up. Additionally he comes from a family with a history of alcohol and sex addiction.
 - The Movant suffered from alcohol dependency.
 - The Movant has been faced with the mental and emotional strain of raising a terminally ill child, his daughter.
- The Court's "special conditions" exceed the statutory provisions for punishment of the Movant's convicted offence.
- The Court overstepped their jurisdiction by ordering at sentencing, and including in the final Order of Judgement and Commitment,:
 - that the Movant must pay child support.
 - that the Movant's access to his family and children will require the approval of a Government appointed supervisor.

(b) Direct Appeal of Ground Seven:

* The answer to both question 1 & 2 in this section is: n/a

(c) Post-Conviction Proceedings:

* The answer to all parts of questions 1 through 7 in this section is: n/a

GROUND EIGHT: The Movant's 5th amendment rights were violated.

(a) Supporting facts:

- During the initial and second I.C.E. interrogation the Movant:
 - believed that he was in custody because:
 - he was constantly surrounded and under the close supervision of I.C.E. agents.
 - he was not under the impression that he was free to go at a time of his choosing.
 - he did not feel that he was a voluntary participant during the interrogations.
 - the Movant was, and has, never been Mirandized.

(b) Direct Appeal of Ground Eight:

- * The answer to both question 1 & 2 in this section is: n/a

(c) Post-Conviction Proceedings:

- * The answer to all parts of questions 1 through 7 in this section is: n/a

CONCLUDES PAGES OF CONTINUATION.